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CHARLES ELMORE CROPLEY
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 522

KATHERINE MACDONNELL,

Petitioner,

vs.

BANK OF AMERICA (a National Trust and Savings Association),

CORPORATION OF AMERICA (a corporation),

CAPITAL COMPANY (a corporation), formerly known as California Lands Inc. (a corporation),

Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION.

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THE COURT PRESS, N. Y. C.

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Opinion Below.

The opinion of the Circuit Court of Appeals is reported at 130 Fed. (2d) 311.

The opinion of the District Court appears in the ~~said~~ record at pages 151-155.

Jurisdiction.

The Circuit Court of Appeals rendered its opinion on July 27, 1942; and denied a rehearing on September 14, 1942.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

Statement of the Case.

As indicated by the opinion of the Circuit Court of Appeals, there are two actions involved, one of them the so-called Title Action, the other the so-called Trespass Action.

The Circuit Court of Appeals affirmed the judgment in favor of the respondents in the Title Action and reversed the judgment in favor of the petitioner and against the Capital Company, one of the respondents, in the Trespass Action.

There is absolutely no "special and important" reason why this Court under its rule 38 should review the judgment.

The opinion of the Circuit Court of Appeals is the only answer we need make to the petitioner's application for certiorari.

As indicated by the opinion of the Circuit Court of Appeals, the issue in the Title Action was simply this: The petitioner, the plaintiff in the Title Action, contended that on February 25, 1931 she entered into a contract with the respondents, the defendants in the Title Action, under which she had agreed to buy the real property involved in the action, including the oil, gas and mineral rights; whereas, the respondents contended that on February 28, 1931 a contract was made between the petitioner and Capital Company (referred to in the record as California Lands Inc.), one of the respondents, under which Capital Company agreed to sell this real property to the petitioner, excepting and reserving, however, to Capital Company, the oil, gas and mineral rights in the property, and that thereafter, on March 9, 1931, Capital Company, pursuant to this contract, executed a deed to the petitioner, in which there was reserved to Capital Company the oil, gas and mineral rights.

The Circuit Court of Appeals held that the findings of the Trial Court, that Capital Company's version of the transaction was true and petitioner's false, was supported by the evidence; that the finding of the trial court that the Title Action was barred by a judgment of the State Court, which was affirmed by the Supreme Court of the State in an opinion reported in 15 Cal. 2d 344, was supported by the evidence; and finally that the finding of the trial court that the action was barred by the statute of limitations was likewise supported by the evidence.

This brief statement is all that need be said with regard to the Title Action. The petitioner cannot even pretend that she has the slightest basis for seeking a review of this judgment by this Court.

As shown by the opinion of the Circuit Court of Appeals, the petitioner litigated in the State Court exactly the same issue that was tried again in the District Court, namely, whether she or Capital Company was the owner of the oil and gas rights. After she was defeated in the State Court and after the judgment in that court had been affirmed by the State Supreme Court, she succeeded in completely retrying her case in the District Court. She is not satisfied with litigating her claim twice, but she now asks the highest court in the land to review the second judgment, claiming, as she must, that the case has some public importance.

The petitioner has no right whatever to have this Court review the judgment of the Circuit Court of Appeals.

The same thing is even more true of the Trespass Action. In this action, the petitioner sought to recover damages against Capital Company for the entry made by it on the land to drill an oil well. As indicated by the opinion of the Circuit Court of Appeals, the trial court found that Capital Company made this entry pursuant to the exception contained in its deed to the petitioner and pur-

suant to the judgment of the State Court rendered in the first action commenced by petitioner against it. As also indicated by the opinion of the Circuit Court of Appeals, the trial court found that Capital Company had entered and drilled its well in a reasonable manner and in accordance with good oil field practice. But the trial court found that plaintiff had failed to introduce satisfactory evidence of the damages claimed by her; that under the law of California, Capital Company, although it had the right to enter, was still obligated to pay the petitioner damages for its entry; that prior to the trial in the District Court, Capital Company, without admitting any legal obligation, had offered to pay plaintiff $8,078.82 (the total of principal and interest theretofore paid by the petitioner to Capital Company on account of the purchase price of the property), provided the petitioner complied with certain conditions, including her waiver of any right to appeal she might have from any judgment which might be entered in favor of Capital Company in the Title Action, but that the petitioner refused to accept this offer.

The Circuit Court of Appeals held that it was well established by the law of California and the law in other jurisdictions that Capital Company, by virtue of the reservation in the deed, had the right to enter upon the land to drill for oil; and that the "Solomonian pronouncement" of the trial judge in allowing the petitioner a judgment for the amount which Capital Company had offered to pay the petitioner in settlement, was not proper under the circumstances; and that, therefore, the judgment in favor of the plaintiff in the Trespass Action should be reversed.

There can be no doubt that the opinion of the Circuit Court of Appeals was correct. No other judgment could have been rendered.

As in the case of the Title Action, the petitioner cannot possibly state any ground for this Court to review this judgment.

CONCLUSION.

The petition should be denied.

Respectfully submitted,

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